



Keyword advertising and Google's trademark policy

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How keywords work

- Users enter **queries** into search engines
- Advertisers select **keywords**
- Keywords trigger the ads





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[hotels, travel, discount hotels](#) - reservations and lodgings

Hotels and hotel reservations by All-**Hotels**, travel, lodgings and discount **hotels** worldwide.

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www.all-hotels.com/ - 47k - Aug 3, 2005 - [Cached](#) - [Similar pages](#)

[Hilton Hotels Home](#)

Hilton **Hotels** online reservations for leisure and business travel at leading airport, resort, and business **hotels** worldwide.

www.hilton.com/ - 67k - Aug 3, 2005 - [Cached](#) - [Similar pages](#)

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Book reservations on-line at Comfort, Quality, Clarion, Sleep, Rodeway, EconoLodge and MainStay Suite **hotels** worldwide.

www.sleep-hotels.com/ - 44k - [Cached](#) - [Similar pages](#)

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- The term entered in the box is the **query**



- Where the **query** matches a **keyword** selected by the advertiser, the ad can appear



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110% Lowest Price Guaranteed

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Keyword matching options

- Exact match
- Phrase match
- Broad match
- Negative keyword



<i>Type of matching selected</i>	<i>Will match these queries</i>	<i>Won't match these queries</i>
Exact match KW=shoes	shoes	Tennis shoes Shoe
Broad match KW=shoes	Shoes Tennis shoes Nike shoes	Tennis
Phrase match KW=red shoes	Red shoes	Shoes red Red tennis shoes
Negative keywords KW=shoes -Nike	Shoes Tennis shoes Adidas shoes	Nike shoes

Examples – broad match


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tennis shoes [Advanced Search](#)
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[Discount Tennis Shoes](#)
[www.midwestsports.com/](#) Massive Selection & rapid shipping Compare our guaranteed low prices.

[Shoes- Shop Nordstrom](#)
[www.nordstrom.com](#) Huge selection on your favorite brands. Free in-store returns.

News results for [tennis shoes](#) - View today's top stories

 [Bo's tennis shoes must go after he breaks foot onstage](#) - Chicago Sun-Times - Aug 3, 2005

[Tennis Warehouse - tennis racquets, tennis shoes, tennis apparel ...](#)
Rackets, strings, balls, **shoes** and other **tennis** gear.
[www.tennis-warehouse.com/](#) - 34k - Aug 3, 2005 - [Cached](#) - [Similar pages](#)
[Wilson Racquets](#) - [return to home](#)
[Head Racquets](#) - [Prince Racquets](#)
[More results from www.tennis-warehouse.com »](#)

[Tennis racquets, tennis shoes, tennis apparel, Wilson, Tecnifibre ...](#)
Tennis racquets, **tennis shoes**, **tennis** apparel, Wilson, Prince, Head, Nike, Adidas, Reebok, Adidas Barricade, Adidas **Tennis** Clothing.
[www.tenniscountry.com/](#) - 81k - Aug 3, 2005 - [Cached](#) - [Similar pages](#)

[Tennis Shoes from The Tennis Company-Nike Tennis Shoes, Prince ...](#)
Tennis Shoes from The **Tennis** Company-Nike **Tennis Shoes**, Prince **Tennis Shoes**, K-Swiss **Tennis Shoes**, New Balance **Tennis Shoe**, Wilson **shoes**.
[www.tenniscountry.com/shoes.html](#) - 31k - [Cached](#) - [Similar pages](#)
[[More results from www.tenniscountry.com](#)]

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[Golfsmith Golf & Tennis](#)
Golfsmith Now Offers Exceptional Deals On Your Favorite **Tennis** Gear
[www.Golfsmith.com](#)

[Tennis Shoes](#)
Save up to %50 on name brand **shoes** at Zappos. Free Shipping. Aff.
[www.Zappos.com](#)

[Find Shoes at Shoes.com](#)
Shop Over 200 Brands at **Shoes.com** Free Shipping, Free Returns, No Tax
[www.Shoes.com](#)

[New Balance Tennis Shoes](#)
Men's & Women's **Shoes**. From only \$49.95. No Tax.
[www.newbalancejerseyshore.com](#)

[Tennis & Court Shoes](#)
New Balance, all styles. 90 day returns & free Shipping.
[www.brownsnewbalance.com](#)

[Shoes Tennis](#)



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nike shoes

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Web

Results 1 - 10 of about 3,380,000 for **nike shoes**. (0.10 seconds)

Nike Shoes - Eastbay.com

www.eastbay.com Shop for brand name **Nike shoes** online at Eastbay.com

Sponsored Link

Sponsored Links

Nike.com

Apparel, **shoes** and accessories.

www.nike.com/ - 5k - [Cached](#) - [Similar pages](#)

Nike.com

www.nike.com/main.html - 5k - Aug 3, 2005 - [Cached](#) - [Similar pages](#)

[[More results from www.nike.com](#)]

Amazon.com Apparel: Nike

Find, shop for and buy Mens, Womens, and Childrens Apparel, **Shoes** & Accessories at ...

Trail Blazers **Nike** Men's NBA Personalized Authentic Home Jersey ...

www.amazon.com/gp/search.html?_encoding=UTF8&node=1036682&brand=Nike - 52k - Aug

3, 2005 - [Cached](#) - [Similar pages](#)

Nike Shoes Jordan Shoes Basketball Shoes from Nike Retro Shoes ...

Nike Shoes Jordan **Shoes** and **Nike** Basketball **Shoes** WWE Diva Stacy Keibler A wide selection of **Nike** basketball **shoes** and Jordan **shoes** from running **shoes** to ...

www.instyleshoes.com/ - 44k - Aug 3, 2005 - [Cached](#) - [Similar pages](#)

Nike Shoes Air Max 95

Nike Shoes and Jordan **Shoes** A wide selection of **Nike** and Jordan **shoes** from Jordan Retro XI to Flightposite KG Olympic to Air Max 95. A **Nike** board to discuss ...

athletic shoes

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www.flyskys shoes.com

Nike Shoes

Huge Selection of **Nike** Footwear.
Up to 70% Off on Select Styles!
www.FinishLine.com

Nike Shoes

Bargain Prices.
You want it, we got it!
Shopzilla.com

Nike Air Force Ones - \$80

Nike Air Jordans, Air Dunks, Bape's Mid, Low, Custom Colors/Styles, AF1
www.ChampKicks.com

Discount Soccer Shoes

Name Brands, Low Prices On Cleats Indoor, Training, Turf & Leisure
www.BigToe.com/



Why is this a trademark issue?

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[Book results for kenneth cole](#)

 [Atlantic City](#) - by John T Cunningham, **Kenneth Cole** - 128 pages

[Kenneth Cole Online Store](#)
Shop the **Kenneth Cole** online store for the latest in men's and women's clothing, footwear, fragrance, handbags, and accessories. Also find a store near you ...
[www.kencole.com/](#) - 24k - [Cached](#) - [Similar pages](#)
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[More results from www.kencole.com »](#)

[Kenneth Cole - Free Shipping & Return Shipping](#)
About **Kenneth Cole**: What you stand for is more important than what you stand in. Fortunately, **Kenneth Cole** New York can help you with both.
[www.zappos.com/n/br/b/86.html](#) - 23k - Aug 3, 2005 - [Cached](#) - [Similar pages](#)

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About **Kenneth Cole** Reaction: For every action... Reaction **Kenneth Cole**. The youthful, fun-loving line from American designer **Kenneth Cole**, ...
[www.zappos.com/n/br/b/332.html](#) - 21k - [Cached](#) - [Similar pages](#)

[Kenneth Cole](#)
Welcome to **Kenneth Cole's** Home Page ... Ken **Cole's** Genealogy Home Page · McKinney, Texas Railroad Depot · 1960 · Panorama 360° Example Silverton, Colorado ...
[www.kencole.org/](#) - 7k - [Cached](#) - [Similar pages](#)

[\\$\\$ Kenneth Cole Coupons & KennethCole.com Coupon Codes](#)

Sponsored Links

[Kenneth Cole at MACY'S](#)
Buy men's sportswear, shoes, and accessories online here.
[www.macys.com](#)

[Discount Kenneth Cole](#)
Get **Kenneth Cole** Items for Less!
Find Huge Selection at Low Price
[www.eBay.com](#)

[Armani Exchange Sale](#)
Fashion for Men and Women
Save up to 40% w/ Free Shipping
[www.ArmaniExchange.com](#)

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Join our website today and
Take advantage of our Great prices!
[www.myshoppingbonanza.com](#)

[red square](#)
red square woman's boutique is your
source for designer clothes.
[www.red-square.com](#)

Why is this a trademark issue?

- Trademark owners do not like to see **competitors'** advertisements appear
- Some trademark owners object to **resellers** using the mark as a keyword
- Some trademark owners do not allow **franchisees** or **affiliates** to use the mark to advertise in competition to the trademark owner



Google's trademark policy – general principles

- Google provides advertising space; it does not “sell keywords”
- Advertisers are responsible for their choice of ad text and keyword triggers
- Google created TM complaint procedure to try to *balance* the interests of TM owners, advertisers, internet users



Google's policy

- Upon receipt of a reasonable complaint from a trademark owner,
- Google will conduct a **limited investigation**,
- US/Canada: and **disable** use of the term in ad text
- Outside US/Can: and **disable** keywords and/or ad text



US Cases – Mark Lemley

Three issues:

- (1) Trademark use
- (2) Consumer confusion
- (3) Contributory infringement

Keyword Cases in Europe

France

Google France v. Viaticum/Luteciel (Versailles Court of Appeal, March 10, 2005)

- Marks were “used” to allow display of competitor’s ads
- Each “use” was a “reproduction” of the mark; no need to establish likelihood of confusion
- Google was aiding and abetting advertisers to commit trademark infringement
- Google must prevent use of keywords which are
 - Manifestly illegal
 - Infringing well-known trademarks
 - Infringing on trademarks Google has knowledge of

Currently on appeal to French Supreme Court

Germany

Nemetschek v. Google (District Court of Munich, 2003)

- Search engine not liable for direct or indirect trademark infringement
- German Teleservices Act provides liability only if search engine has acquired knowledge of the illegality of the use of particular keywords and it is technically possible and reasonable for the search engine to prevent such use

Germany

Metaspinner v. Google (District Court of Hamburg, 2004)

- Metaspinner obtained PI re a single ad
- Metaspinner alleged Google violated the injunction because other ads appeared
- Court: If the mark is not in the ad text, there is no trademark use or unfair competition
- Notice of one third party's misuse of a mark in an ad is not notice that other third parties' use of that mark would be wrongful
- On appeal

Austria

Longevity Health v. Google (Commercial Court of Vienna, prelim. inj., 4/13/05)

- Preliminary injunction dismissed
- No trademark infringement
- No unfair competition
- Longevity has appealed the denial of preliminary injunction

UK

- Reed Executive v. Reed Business Information (UK Court of Appeal – March 2004)
 - For similar marks, use of metatags and keywords unlikely to be confusing if there is no confusing material in the resulting web sites, search results or advertising
 - Court didn't rule on whether the decision would be the same for identical marks (2 different statutory provisions apply to similar marks and identical marks)
 - Nothing about the position of search engines or other service providers